IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Criminal Appeal No.193 of 2001.

Date of decision: 8.5.2007

State of H.P. **..Appellant.**

Versus

Prem Chand **..Respondent**

Coram

The Hon'ble Mr. Justice Surjit Singh, J.

The Hon'ble Mr. Justice Sanjay Karol, J.

Whether approved for reporting ?[1] *No.*

For the Appellant : **Mr. S.D. Vasudeva, Addl. A.G. with Mr. D.S. Nainta, Dy. A.G**

For the respondent : **Mr. Manoj Thakur, Advocate.**

Surjit Singh, J.(oral)

Heard and gone through the record.

Respondent Prem Chand was sent up for trial for offences punishable under Sections 307, 325, 452, 323 and 427 of the Indian Penal Code and Section 25 of the Indian Arms Act, 1959. The allegations, on which the respondent was, challaned may be summed up thus.

On 29.9.1997, when one Nathu Ram alongwith his father, an uncle and a brother-in-law, was busy in repairing his house, the respondent allegedly went there armed with a gun and threatened that he would kill said Nathu Ram and his family members. Immediately after administering the aforesaid threat, the respondent

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

allegedly fired a gun shot aiming at the legs of Nathu Ram as a result of which he sustained as many as six punched out wounds of the size varying from .5 x .5 cms to 2x2 cms on his legs. All the injuries were found to be simple in nature by the doctor, who conducted the medico legal examination. One Jagar Nath, who was standing close-by, also sustained one open wound measuring 5 cms x 4 cms on his left thigh. This injury was also opined to be simple in nature. One more injury was noticed on the person of Jagar Nath, which was in the nature of fracture of radius ulna of right forearm and this injury was opined by the doctor to have been sustained as a result of hitting by some blunt weapon. It was grievous in nature.

The trial Court after recording the evidence of the prosecution and examining the accused under Section 313 Cr. P.C., came to the conclusion that the respondent was guilty of offences under Section 323 and 325 of the Indian Penal Code. Accordingly, he was acquitted of the charge under Section 307 of the Indian Penal Code and convicted of the offences under Sections 323 and 325 of the Indian Penal Code.

The present appeal has been filed by the State. The grievance of the appellant is that the evidence has not been correctly appreciated by the learned trial Court and that as a matter of fact, evidence on record proves beyond doubt that the act committed by the respondent is punishable under Section 307 I.P.C.

We have heard learned Additional Advocate General. His submission is that there are judgments by the Hon'ble Supreme Court to the effect that even in cases where the injury is simple in nature, the case can fall in the category of offence of attempt to commit murder. There cannot be any dispute with the proposition stated by the learned Additional Advocate General. We may go a step further and say that there can be cases in which even if the victim does not sustain any injury and still the assailant may be guilty of attempt to commit murder. All depends upon the *mens rea*.

In this case, the respondent cannot be said to have had the requisite *mens rea* for committing the murder. He aimed the shot at the legs of Nathu Ram. The shot hit his legs causing simple injuries only. One person standing close-by also sustained a simple injury on his leg as a result of the firing of the gun shot. The fact that the respondent aimed the shot at the legs, which cannot be said to be a vital part, itself is enough to jump to the conclusion that he did not have the intention to kill Nathu Ram; nor can the requisite knowledge be attributed to him. Not only this, the fact that the shot caused only simple injuries in the shape of punched out wounds of very small size is indicative that the cartridge instead of having some big sized pallets, had very small pallets because had there been any big sized pallet that would have caused some serious and deep wound.

As a result of the above stated position, we find no merit in the appeal and the same is, therefore, dismissed.

Cr.M.P.107 of 2007

No orders, in view of the disposal of the main matter. The application is disposed of.

(Surjit Singh), J

May 8, 2007(ss) **(Sanjay Karol), J**